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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/695,041

10/28/2003

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P-6811

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7590

12/21/2006

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EXAMINER

GILBERT, WILLIAM V

ART UNIT

PAPER NUMBER

3635

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|-----------|---------------|
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3 MONTHS

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                                       |   |  |
|------------------------------|---------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/695,041  | <b>Applicant(s)</b><br>RIDENOUR, RANDALL D. |  |
|                              | <b>Examiner</b><br>William V. Gilbert | <b>Art Unit</b><br>3635                     |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

This is a First Action on the Merits. Claims 1-5 are pending and examined as set forth below.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 3 and 5** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3: improper language for a Markush grouping is used per line 2, "comprising...and...foams." See MPEP 2173.05(h) for proper framing of a Markush group. Appropriate action is required

Claim 5: improper dependency per line 1, "The method of Claim 5..." Examiner assumed Applicant intended to depend Claim 5 from Claim 4 since it is the only other method claim. Appropriate action is required.

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***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Rudeen (U.S. Patent No. 4,876,950).

Claim 1: Rudeen discloses a closure system for a roof (Figure 3, element 32) having a ridge cap (32) with a plurality of ledges (ridge area proximate each element 44) and a foam closure (34; Column 3, lines 35-40) mounted thereto (Column 3, lines 62-64).

Claim 2: the foam in Rudeen is malleable. The phrase "can conform...panels," lines 2, 3 is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 3: the foam is ventilating (Column 3, line 39).

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***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rudeen in view of Coulton et al. (U.S. Patent No. 5,673,521).

Claim 4: Rudeen discloses a method of forming a ridge cap (Figure 3), with a plurality of dependent ledges and attaching a foam closure (34; Column 3, lines 62-64) to the ridge cap, but Rudeen does not disclose the attachment process as being automated. Coulton discloses a method of making a ridge cap (Figure 1, element 22) with a closure (9), and it is automated (Figure 4, where R1 is the ridge material and R2 is the closure system), however Coulton does not disclose that the closure is foam, but that it could be a suitable material providing air permeability (Column 4, lines 15-21). It would have been obvious at the time the invention was made to a person having

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ordinary skill in the art to make the ridge cap in Rudeen with automated means as in Coulton because Coulton teaches that manufacturing such an article is capable through automated means. Further, since Coulton discloses the closure (9) could be a structure providing air permeability, then the foam material in Rudeen qualifies as such material.

Claim 5: Rudeen discloses the claimed invention except that the forming of the ridge cap and attaching the foam closure are concurrent on a manufacturing line. Coulton discloses forming the ridge cap (Figure 1, element 1; Figure 5, elements D1, D2) and attaching the closure (Figure 1, element 9; Figure 5, elements R2, P1 and P2) concurrently on a manufacturing line (Figure 5, generally). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to form the ridge cap and attach the closure concurrently as a matter of efficiency of manufacture and Coulton teaches that these steps can occur concurrently.

#### **Conclusion**

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sells (U.S. Patent No. 5,427,571), Rotter (U.S. Publication 20055/0126088), Sells (U.S. Patent No. 5,830,059).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571.272.6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WVG 25 Nov 06  
19 Dec 06

  
NAOKO SLACK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600